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May 2, 2019

Honorable Lynn Adelman  
U.S. District Court Eastern District of Wisconsin, Room 364  
517 East Wisconsin Avenue  
Milwaukee, WI 53202

RE: *Burton v. American Cyanamid Co., et al.* – 07-C-0303  
*Owens v. American Cyanamid Co., et al.* – 07-C-0441  
*Sifuentes v. American Cyanamid Co., et al.* – 10-C-0075

Dear Judge Adelman:

By text order dated April 29, 2019, this Court directed the parties to confer before submitting proposed preliminary instructions. Defendants have failed to do so, instead unilaterally filing their proposed preliminary instructions earlier today. (Doc. 1439).

As background, Plaintiffs filed their proposed preliminary instructions on March 11, 2019. (Doc. 1299). Nearly a month later, on April 26, 2019, Defendants emailed Plaintiffs their proposed preliminary instructions. On May 1, 2019, Plaintiffs emailed Defendants their redline mark-up of Defendants' proposed preliminary instructions. (See attached.) Without engaging *any* effort to meet and confer in order to narrow the differences between the proposals, Defendants unilaterally declared an impasse and filed their proposed preliminary instructions.

Defendants' disregard of the Court's text order should not be tolerated. Defendants should be directed to confer with Plaintiffs in good faith regarding Plaintiffs' redline mark-up. Or, in the alternative, this Court should simply accept Plaintiffs' redline mark-up as the preliminary instructions to be given in this case.

The principal difference between the two sides' proposed preliminary instructions lies in the statement of the Claims and Defenses. Specifically, Defendants have excised any description of the causes of action that the jury will be called upon to decide. Given the unique nature of the risk contribution rule and in order to avoid juror confusion, Plaintiffs believe that it is essential that jury have a baseline understanding of the elements of these causes of action. Plaintiffs' redline mark-up sets forth these elements in a non-argumentative manner that largely tracks the language of *Thomas*, and thus Defendants' unilateral rejection of this language – let alone, unwillingness to even discuss it (and Plaintiffs' other proposed edits) – is inexplicable.

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Plaintiffs are prepared to submit a clean version of the attached redline mark-up of Defendants' proposed preliminary instructions should the Court desire.

Sincerely,

*/s/ Fidelma Fitzpatrick*

Fidelma Fitzpatrick